

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

LULA WILLIAMS, et al., on behalf :
of themselves and all individuals : Civil Action No.
similarly situated : 3:17CV461
vs. :
BIG PICTURE LOANS, LLC, et al. :
----- : June 24, 2020
RENEE GALLOWAY, et al., as :
individuals and as representatives : Civil Action No.
of the classes : 3:18CV406
vs. :
BIG PICTURE LOANS, LLC, et al. :

COMPLETE TRANSCRIPT OF THE CONFERENCE CALL

BEFORE THE HONORABLE ROBERT E. PAYNE

UNITED STATES DISTRICT JUDGE

APPEARANCES:

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United States District Court

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1 MR. WITSCH: And, Your Honor, Michael Witsch for Matt
2 Martorello is also on the call.

3 THE COURT: For the plaintiffs?

4 MS. KELLY: Good afternoon, Judge. This is Kristi
5 Kelly for the plaintiff, and I believe Len Bennett was also on
6 the call, but I haven't heard him since.

7 MR. BENNETT: I'm on the phone, Judge.

8 THE COURT: Mr. Bennett. Anybody else?

9 MR. GUZZO: Good afternoon, Your Honor. This is also
10 Andrew Guzzo for the plaintiffs.

11 THE COURT: Is that everybody?

12 MR. CADDELL: Good afternoon, Your Honor. This is
13 Mike Caddell for the plaintiff.

14 THE COURT: Mr. Caddell, who are you with again?

15 MR. CADDELL: Caddell and Chapman in Houston, Your
16 Honor, and we filed a notice of appearance in the cases.

17 THE COURT: When did you do that?

18 MR. CADDELL: I believe about two weeks ago.

19 THE COURT: All right. And will you mind telling me
20 why you are coming in at this stage?

21 MR. CADDELL: Your Honor, we have companion cases in
22 Oregon and Massachusetts, and we've agreed to work
23 cooperatively, and I have been in front of the Court, your
24 court, on other -- in other matters, and it was felt that I
25 could be of assistance. In fact, I took a deposition in this

1 case on Monday with respect to the misrepresentation hearing.

2 THE COURT: That's very interesting given the
3 arguments that are being made about the motions, number 796 in
4 Williams and 444 in Galloway. I'll be interested to see how
5 that all pans out. We need to set a schedule. When do you
6 want to file your response, Ms. Alamo?

7 MS. ALAMO: Your Honor, we could file by July 1st.

8 THE COURT: That's about a week from today; right?

9 MS. ALAMO: A week from today.

10 THE COURT: All right. And when are you going to
11 file your reply, Mr. Bennett?

12 MR. BENNETT: July 8th, which would be a Wednesday.

13 THE COURT: That will be the date they'll be filed.

14 MR. BENNETT: Your Honor.

15 THE COURT: Yes.

16 MR. BENNETT: Just not to continue to pile on the
17 work here for all, but there are two other matters that we at
18 least want to bring to the Court's attention that might be the
19 subject of motions. One is contested and, apparently, one not.

20 THE COURT: Okay.

21 MR. BENNETT: The first is, the uncontested one is
22 that the parties have agreed now, today, to a schedule for
23 making discovery designations. You'll see from the respective
24 witness list that both sides rely heavily on depositions, but
25 we had neglected to put in our previous scheduling order an

1 accommodation for discovery deposition designations, and we'll
2 submit that by agreed order formally on the docket, but just to
3 give the Court a heads-up, the plaintiff will be serving our
4 discovery designations this coming Monday, and the defendant
5 will be serving those designations when it serves its response
6 to our brief which is, I think, the 13th.

7 MS. ALAMO: Correct.

8 THE COURT: When are you going -- are these
9 videotaped depositions?

10 MR. BENNETT: Some are, Judge, and --

11 THE COURT: Well, let's get straight what we're doing
12 here. I don't consider any depositions for any purpose unless
13 you have designated and have first worked out any objections
14 that you have and present to me, in a cogent form, any
15 objections on which I need to rule.

16 Objections on which I rule are to be presented in the
17 following way: A transcript -- a copy of the transcript, not
18 the entire transcript, just the part that's at issue, is
19 prepared, and then you highlight who is offering -- let me know
20 who is offering it, who is objecting to it, and in the margin
21 tell me what the objection is so that I know what it is that I
22 am dealing with, or if you don't object to anything, then you
23 don't object to it, but I've never had that happen, so I'm not
24 expecting it will happen now.

25 Ordinarily the plaintiff takes one color and the

1 defendants take the other, and you do your highlighting. That
2 way I can identify readily what it is, and I just want what it
3 is that I'm being called upon to rule on. I don't want the
4 whole deposition.

5 I don't know if any of you have been through that
6 process here before, but you can talk to lawyers who have and
7 work it out. But if you don't do that, I'm not taking the
8 depositions and ruling on them at trial.

9 And then you have to do them -- or at the hearing.
10 Then you have to do all that in time to edit -- for me to rule
11 on it and edit the deposition, videotaped deposition, and the
12 other depositions -- I mean, the printed deposition you don't
13 need to worry about, but the video deposition you have to edit.

14 So that's part of what you have yet in front of you,
15 and you didn't mention any of that in your discussion, Mr.
16 Bennett, which is why I went into that discussion. Do you
17 understand what I'm saying?

18 MR. BENNETT: I do, Judge, and we've been through the
19 process for trial in this court, and I'm sure that defense
20 counsel is well represented locally and also has, and we'll
21 make sure that we put that in the order and comply and provide
22 for sufficient time for that process, Your Honor.

23 THE COURT: What's the contested matter that you are
24 speaking of?

25 MR. BENNETT: As is customary, we've asked for

1 previous testimony, deposition transcripts of Mr. Martorello.
2 We understand that he is being deposed, I believe tomorrow and
3 the next day, by the tribe in its arbitration matter. We
4 learned that about a week ago, reached out to defense counsel
5 and reached out to the tribal defendants' counsel to confirm
6 that we would be able to receive a copy of those transcripts of
7 Matthew Martorello, of the deposition. Certainly we
8 represented we would pay for any expedited transcripts.

9 We understand from the tribal defendants that they --
10 they don't have an objection, they just don't want to offend
11 any protective order demands that Mr. Martorello makes, but we
12 understand that Mr. Martorello does not -- his lawyers have not
13 yet agreed to produce the transcript for those upcoming
14 depositions.

15 Our deposition of Mr. Martorello are scheduled next
16 week. So we believe that having those transcripts would
17 certainly shorten, expedite, and make more efficient our
18 intended deposition as well.

19 THE COURT: Are you saying that Mr. Martorello's
20 counsel has refused to provide them or they haven't responded
21 to you?

22 MR. BENNETT: I understand --

23 MS. ALAMO: Your Honor, if I may, it's Michelle
24 Alamo, and I'm the one who responded to plaintiffs' counsel,
25 and I told him I could not agree at this point because the

1 depositions have not been taken. They're being taken in an
2 arbitration that involves claims unrelated to this case. I do
3 not know what issues will be presented there or if they have
4 any relevance to this case, and I do not know at this point if
5 any party is going to lodge confidentiality objections.

6 I have not heard from the tribal defendants in their
7 arbitration that they've had any agreement reached with Mr.
8 Bennett. So, right now, I would say this is not ripe and that
9 it's premature. The deposition is taking place today. One is
10 Mr. Martorello in his personal capacity and one as ECA's
11 manager, Eventide. Eventide is not a party to this action. So
12 I don't know that it's contested yet.

13 THE COURT: Is your firm counsel to Mr. Martorello in
14 that action?

15 MS. ALAMO: Mr. Martorello is being deposed in his
16 personal capacity. He is not a party to that action. He's a
17 fact witness in that action. He's being represented at his
18 deposition by Loeb & Loeb. The arbitration does not involve
19 claims against or brought by Mr. Martorello.

20 THE COURT: He's a witness.

21 MS. ALAMO: He's a witness.

22 THE COURT: I'm not being asked to rule on anything
23 now, and so I'm not going to, but it seems to me like there's a
24 big difference between whether what he says is admissible and
25 whether counsel can have access to the depositions to decide

1 whether they want to offer it or not. It seems to me that
2 there are two different issues. Mr. -- who is representing --
3 what did you say, he's testifying as an officer of who?

4 MS. ALAMO: Eventide Credit Acquisitions, I believe
5 as their corporate designee --

6 THE COURT: Who is representing Mr. Martorello in
7 that deposition?

8 MS. ALAMO: Loeb & Loeb.

9 THE COURT: Loeb & Loeb is representing him in both
10 depositions then, the personal and the 30(b)(6); is that right?

11 MS. ALAMO: Yes. I believe so, yes.

12 THE COURT: All right. Well, it seems to me like the
13 people who have -- what jurisdiction do I have at this juncture
14 to order anything about those depositions? You have to get
15 access to them first, don't you, Mr. Bennett?

16 MR. BENNETT: Well, yes, sir. We've asked for them
17 in discovery in this case for Mr. Martorello, and so the
18 issue -- the proffered position from the defendant is it's not
19 ripe because they haven't yet reviewed them because -- we're
20 just trying to keep things moving, and you can hear from the
21 continued position-taking that the defendant is going to argue
22 that it doesn't -- that Mr. Martorello is not the same thing as
23 Eventide which is, of course, what happened in the bankruptcy
24 when the Court down there dismissed for bad faith because of
25 that issue.

1 THE COURT: What difference does it make? If a
2 witness testifies, that testimony can be used as evidence in an
3 appropriate situation or to impeach if the rules respecting
4 whether or not they can be used for affirmative purposes and
5 impeachment respectively are satisfied, but the question is
6 whether the transcript is available it seems to me. Isn't that
7 the issue you are raising?

8 MR. BENNETT: Yes, sir.

9 THE COURT: Then I think you all need to sort that
10 out and figure out how to deal with that. I don't know what I
11 can do about that, but it may be that I -- I guess you said you
12 filed an interrogatory answer or a request for production, and
13 Martorello's a defendant in this case, and so if he's an
14 individual and if he's a 30(b)(6) witness, it would seem to me
15 that there isn't any reason why he can't be required to answer
16 that interrogatory, and if he refuses to provide it, then I
17 guess the proper remedy is a motion to compel. I guess that's
18 what I'd do. I don't know. I haven't figured it out and
19 haven't given it any thought.

20 So it seems to me that what you need -- when did you
21 posit the interrogatory or the request for production of
22 documents respecting that, the transcript of these two
23 depositions that he's giving today?

24 MR. BENNETT: Generally as to all of them, Judge, and
25 so we were just trying to head off the conflict that we're

1 going to have. As the Court knows, the discovery obligation is
2 to produce documents over which Mr. Martorello has possession
3 or control, and he would have the ability to obtain that
4 transcript as soon as the deposition is completed.

5 THE COURT: Well, I'll let you deal with all that.
6 You figure the law out, and if there's an issue, you can
7 present it to me. I'm not going to try to brainstorm it with
8 you all now. You can present the issue in the form of whatever
9 motion you want to present if you need to present.

10 As a general proposition, courts favor having the
11 parties have access to whatever a witness has said on a topic,
12 and then whether or not that comes in is a different, entirely
13 different question because it's got to meet certain rules
14 before it comes in. So we'll deal with that if and when you
15 figure that out. You figure it out and where you stand and
16 what you need to do. Anything else that needs to be done?

17 MR. BENNETT: No, sir.

18 MS. ALAMO: No, Your Honor.

19 THE COURT: All right, thank you very much.

20 MS. ALAMO: Thank you.

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22
23 (End of proceedings.)
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Date _____